IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 500 of 2004(H)

OS.313/2002 of M.C.,VADAKKANCHERRY

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PETITIONERS:

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1. **NARAYANAN.**

2. **APPUKUTTAN.**

3. **KESAVAN.**

4. **SASIDHARAN.**

5. **LAKSHMI.**

6. **NANI (PETITIONERS ARE THE CHILDREN OF LATE ARUMUGHAN, PALLATHU HOUSE, VARAVATTUR DESOM PALLUR VILLAGE, TALAPPILLY TALUK, THRISSUR DISTRICT)**

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS:

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1. **KALYANI, W/O.LATE KRISHNAN, PATTARA HOUSE, THALASSERY VILLAGE, AND DESOM, TALAPPILLY TALUK, THRISSUR DISTRICT.**

2. **PADMANABHAN, S/O.LATE NANI, PALLATH HOUSE, VARAVATTUR DESOM, PALLUR VILLAGE, TALAPPILLY TALUK, THRISSUR DISTRICT.**

3. **SUBRAMANIAN, S/O.KARATHU KARUPPAN, VARVATTUR DESOM PALLUR VILLAGE, TALAPPILLY TALUK, THRISSUR DISTRICT.**

4. **CHANDRAN, S/O. DO. DO.**

5. **SAVITHRI, D/O. DO. DO.**

BY ADV. SRI.P.RADHAKRISHNAN for R2 & R3
SRI.MADHU RADHAKRISHNAN
SRI.K.S.ANIL KUMAR (VAIKOM)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.500/2004 H

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT DTD. 19/06/02 AS O.S.313 OF 2002, BEFORE THE MUNSIFF COURT, WADAKKANCHERRY.**

EXT.P2: **COPY OF THE WRITTEN STATEMENT DTD. 28/10/2002, IN O.S.313 OF 2002.**

EXT.P3: **COPY OF THE I.A.2082 OF 2003 DTD. 21/11/2003 IN O.S.313 OF 2002.**

EXT.P4: **COPY OF THE ORDER IN I.A.2082 OF 2003 IN O.S.313 OF 02 DTD. 10/12/03, BYTHE MUNSIFF COURT, WADAKKANCHERRY.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.500 of 2004

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Dated: 18th June, 2007

JUDGMENT

An application for amendment of the written statement filed at the fag end of the trial was dismissed by the learned Munsiff inter alia on the ground that the proposed amendment will enable the petitioners-defendants to get away from the effect of the admissions, earlier pleadings and also new pleadings. Having regard to the contours of this court's jurisdiction under Article 227 of the Constitution it cannot be said that the impugned order suffers from any infirmity of such a magnitude as to warrant correction under the supervisory jurisdiction of this court. But as rightly submitted by the counsel for the petitioners the suit is for partition. Partibility of the estate and the extent of shares are the crucial issues to be decided. It is for the court below to decide these issues on the basis of the evidence which has come on record particularly the documentary evidence. I am sure that whatever be the pleadings regarding eligible shares since the principal issue is partibility of the estate and the extent of shares, the learned Munsiff will decide those issues on the

basis of the documentary and other evidence which has come on record. With these observations, repelling the challenge against Ext.P4, the Writ Petition is dismissed. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**